

**OPEN MEMORANDUM**  
**AT&T SMALL WIRELESS FACILITY APPLICATIONS**

This memorandum is designed to supplement the staff reports and zoning and planning commission reports regarding New Cingular Wireless PSC LLC, dba AT&T Mobility's ("AT&T") applications for three Special Use Permits for the installations of small wireless facilities on taller replacement Ameren utility poles within the City's rights-of-way. The purpose of this memorandum is to help the Council and residents understand the limitations the Missouri State Legislature has placed on local governments in considering wireless communication applications.

Local governments are legally prohibited from considering and relying upon certain items when reviewing and deciding whether to approve or deny a wireless application. In general, members of the City Council may not<sup>1</sup>:

- 1) Evaluate an applicant's business decision regarding its designed service, customer demand, or quality of its service to or from a particular area or site § 67.5094(1) RSMo.
- 2) Evaluate an application based on other available sites § 67.5094(2) RSMo.
- 3) Dictate type of wireless facility, infrastructure, or technology § 67.5094(3) RSMo.
- 4) Require removal of existing facilities as condition of application § 67.5094(4) RSMo.
- 5) Review for or condition application based on environmental RF concerns § 67.5094(5)-(8) RSMo.
- 6) Impose airspace restrictions greater than FAA § 67.5094(9) RSMo.
- 7) Prohibit generators § 67.5094(10) RSMo.
- 8) Charge application fee different from other "commercial developments"; capped at \$500 for collocations and \$1500 for new or substantial modification (unless otherwise agreed) § 67.5094(11) RSMo.
- 9) Impose Surety requirement for abandonment (unless imposed for other types of "land uses") § 67.5094(12) RSMo.
- 10) Require applicant:
  - a. to allow City use of applicant's facilities § 67.5094(19) RSMo.
  - b. to use City facilities or services § 67.5094(17) RSMo.
  - c. to provide services at less than market value § 67.5094(13) RSMo.
- 11) Limit duration of approval (no timed SUP) § 67.5094(14) RSMo.
- 12) Discriminate or have different considerations or preference based on ownership (public v. private or otherwise) § 67.5094(15) RSMo.
- 13) Impose any unreasonable appearance requirements § 67.5094(16) RSMo.
- 14) Require indemnification/insurance for City (non-lease situations) § 67.5094(18) RSMo.
- 15) Approve certified historic structures without 30-day delay for hearing § 67.5094(2) RSMo.

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<sup>1</sup> This list is not exhaustive and § [67.5094](#) RSMo. should be reviewed for precise language

These prohibitions, therefore, set limits on certain lines of questioning from Council members regarding AT&T's proposed wireless facility installation and reliance—or the appearance of reliance—on certain information as the basis for a decision relating to such proposed installation. ***The most common questions to be avoided, as such information could not be relied on as a basis for the decision, include questions regarding:***

- Availability of collocation opportunities or other sites available for a wireless facility installation;
- Necessity of site related to services provided or of business decisions regarding applicant's service;
- Availability of public versus private land for such proposed installation; and
- Potential health (or other) concerns of environmental RF (radio frequency) emissions or related "5G" antennas or technology, or other wireless technology.

**Please note, that the above is a non-exhaustive listing intended to target the most likely lines of inquiry on proposed telecommunications facilities to be avoided.** It is also important to note that members of the public may make any comments they feel are important to them regarding AT&T's pending applications and while comments related to any of the above limitations cannot be relied upon or considered by Council, these limitations are not intended to deny residents their right to speak about the proposed applications.

The Council can and should consider the factors related to approval of a special use permit as it relates to the specific property of the proposed installation when determining whether to grant or deny AT&T's proposed applications. Therefore, consideration and questions regarding the following are appropriate and permissible:

- Whether the new tower will alter the character of the subject area;
- Effect the installation will have on property values in the area;
- Whether the installation will blend in with the landscape of the area;
- Topography of the specific property; and
- General suitability of the property in question for the proposed use.

Again, the above is not meant to be an exhaustive list of permissible or appropriate questions but rather examples of some of the most common considerations.